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CURRENT TOPICS

Reform of Law of Libel and Slander

THE object of the Defamation (Amendment) Bill, which was presented in the Commons on 4th December and was to be considered on its second reading on 1st February, is to give effect to the recommendations of the Porter Committee on the Law of Defamation, which reported in 1948. Among its many proposals is one that in the case of "unintentional defamation" a correction and apology shall suffice without the award of monetary damages. It is also proposed that the definition of a "newspaper" shall be enlarged to include monthly periodicals; and that the number of reports entitled to privilege shall be extended. A proposal which was not in the report of the Porter Committee is that where the words in question concern an "invented character" it shall be for the plaintiff to prove negligence, but in all other cases the onus will be on the defendant to prove that he did not intend to defame the plaintiff and that he was not negligent. In cases of slander affecting official, professional, or business reputation, the plaintiff will be able to sue without being required to allege or prove special damage, whether or not the words are spoken of him in relation to his calling. Another clause provides that if words complained of contain two or more distinct charges against the plaintiff the defence of justification shall succeed if so substantial a portion of the charges are proved to be true that the remaining charges not so proved do not add materially to the injury to the plaintiff's reputation. Similar provisions apply to the defence of fair comment. Mr. HAROLD LEVER, M.P., who introduced the Bill when he won first place in the ballot for private members' Bills, is to be congratulated on his decision to follow the recent precedent of the Common Informers Bill in the late Parliament, when it was possible to secure urgent legal reform by non-party action in private members' time. Full Government help was made available in the preparation of the Bill.

Parents and Children

SPEAKING to the Dorset County Magistrates on 15th January, the LORD CHIEF JUSTICE said that the law was quite strong enough to deal with cases of parents brutally ill-treating their children, and that what was very often needed was a change in administration. In really bad cases the right charge was "assault occasioning bodily harm" or malicious wounding, or, indeed, in some cases, "assault causing bodily harm with intent to do bodily harm." Where there was real brutality, he continued, magistrates should refuse to deal with the case under the Children and Young Persons Act, where it gets dealt with summarily, and insist that it be put forward under the Offences Against the Person Act, so that it can be sent for trial. In cases of child neglect, he said, sending a mother to prison achieved nothing. It did not teach her how to keep a home and look after her children. With reference to a suggestion put forward by the Bishop of Lichfield, he said that if a woman could be sent to a place where she could be taught these things, it would be a great deal better than

CONTENTS

passing a prison sentence, but he was afraid nothing could be done in the present state of affairs. We understand that the Salvation Army conducts a place of this sort at Plymouth with the support of the Home Office, and that it is not full. The results achieved there, according to report, would amply justify magistrates in using their wide powers under the Criminal Justice Act, 1948, so that mothers guilty of child neglect may be sent to such a place for tuition.

Alcohol and the Road User

A FULL report of the speeches at a conference arranged by the Pedestrians' Association, on Alcohol and the Road User, is now obtainable (price 1s.) from the Pedestrians' Association, Mitre House, 44–45 Fleet Street, London, E.C.4. It provides informative reading and should be in the hands of all whose conscience has been awakened to the evil which Sir MAX BEERBOHM, in a broadcast in 1936, compared to the working to death of young women and children in the factories and coal mines in the last century. Dr. J. ARTHUR GORSKY, divisional surgeon to the Metropolitan Police, pointed out that although the operative word "drunk" was dropped from the Criminal Justice Act, 1925, when s. 10 of the Road Traffic Act, 1930, was enacted and "driving under the influence of drink" was substituted, magistrates and juries still assessed cases as if the word "drunk" was still operative. He wondered whether benches of magistrates ever took cognisance of para. 3 of the Highway Code, which warned against the use of alcohol even in small amounts. Addresses were also given by Mr. J. A. IMRIE, F.R.C.S., chief medical officer of the Glasgow Police, Mr. GUY SIXMITH, stipendiary magistrate of Cardiff, Dr. HENRY YELLOWLEES, and Mr. R. GRAHAM PAGE, M.B.E., LL.B., solicitor and formerly justices' clerk to Ringwood Petty Sessional Division.

Restrictions on Some Hire-Purchase Agreements

THE Board of Trade have announced that, as indicated in the Chancellor's statement in the House of Commons on 29th January, they have made an order restricting the terms for initial deposit and repayment period in certain hire-purchase and credit-sale agreements. This is effected by prohibiting the disposal or possession of certain goods unless the agreement complies with the terms of the order. The goods affected by the order are radio and television sets, gramophones, motor cars and commercial vehicles, bicycles, office furniture and equipment and a number of domestic appliances and apparatus such as space and water heaters, dish washers, washing machines, wringers, floor polishers, vacuum cleaners, sewing machines, refrigerators and lawn mowers. Second-hand as well as new goods are included. Domestic furniture and bedding are *not* affected by the order. The existing requirements as to service charge, deposit and period for payment of the balance remain effective. Cookers also are *not* included in the goods listed in the new order. The order affects in two ways hire-purchase and credit-sales agreements made in regard to these goods after it comes into force: (*a*) It fixes minimum initial deposits. For bicycles, this deposit is 25 per cent.; for all the other goods in the order it is 33⅓ per cent. (*b*) It prescribes a maximum period within which the balance of the price must be paid. For bicycles, the period is a year; for the other goods in the order it is eighteen months. The Board of Trade have also issued an order making certain consequential amendments to the existing order controlling service charges on price-controlled goods. The orders came into force on 1st February. They are the Hire-Purchase and Credit Sale Agreements (Control) Order, 1952 (S.I. 1952 No. 121), and the Hire-Purchase and Credit Sale Agreements (Maximum Prices and Charges) (Amendment No. 2) Order, 1952 (S.I. 1952 No. 122).

Damages against Husband for Trespass in the Home

ON 24th January last Mrs. Alice Maud Mack sued Mr. William Arthur Mack, her husband, at the Bow County Court, seeking to eject him from their home and claiming damages against him for trespass. The following exchange took place: Judge Andrew: "By what right do you say you are there?" Mr. Mack: "I am her husband." Judge Andrew: "That doesn't give you a right to be there." He made an order for possession in two months and awarded the wife £36 damages against her husband for trespass. In this case the wife was the owner of the house and had left it because, as she stated, she had been badly treated. This case is of interest because it is one of those rare cases in which an action in tort is brought by a wife against her husband, and the even rarer type of case in which the action in tort relates to the matrimonial home. Such actions are of great interest inasmuch as the courts are in the difficult position of applying not the ordinary law of landlord and tenant, but the law of landlord and tenant complicated by the matrimonial law. A wife in her husband's house or a husband in his wife's house is merely a licensee (*Bramwell* v. *Bramwell* [1942] 1 All E.R. 137 (C.A.)). When the wife is the licensee, however, the husband cannot determine her licence and turn her into a trespasser—even though there has been a decree of judicial separation. Perhaps it would be slightly more accurate to say that even if he purports to do so such action will have no legal effect, because at common law a husband cannot sue his wife in tort. When the boot is on the other foot, however, as in the case of *Mack* v. *Mack* above, the wife *can* treat her husband as a trespasser. This is because s. 12 of the Married Women's Property Act, 1882, provides: "Every woman, whether married before or after this Act, shall have in her own name and against all persons whatsoever, including her husband, the same civil remedies . . . for the protection and security of her own separate property as if such property belonged to her as a *feme sole*, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort." In exercising the power to eject a husband the courts must use great care, because the matter is complicated by the matrimonial position. Both spouses have by matrimonial law a right and a duty to live together. Any unlawful withdrawal from the home (and, *a fortiori*, any use of the machinery of the courts to exclude a spouse from the matrimonial home) may constitute desertion if it is later found to be "without due cause." But it is obviously not competent for the county court on a mere action in trespass to form a true opinion of the rights and wrongs of a matrimonial dispute. We wonder whether in this type of case the issues could not be referred by the county court to the Divorce Division.

An Ancient Petition

MR. J. PRITCHARD JONES, solicitor, of Caernarvon, has discovered among some ancient documents in his possession a petition addressed to the Lord High Chancellor in the reign of George III asking that a new coroner be appointed for the county of Caernarvon. An interesting feature of the document is that it bears the mark of the Crown and a reference number made by a civil servant 136 years ago. A chronicler of the habits of bureaucrats might possibly find some lesson in this discovery. Mr. Pritchard Jones, who is himself deputy coroner for North Caernarvonshire, is offering the document to the county archivist.

REPORT OF THE COMMITTEE ON LOCAL LAND CHARGES—III

Administrative Changes

THE committee recommend a number of minor administrative changes. They point out that, at present, the clerk of a local authority is the registrar of local land charges, and has the duty of keeping the register. It is now almost invariably the rule that the fees are paid over to the local authority. The committee consider that the responsibility for keeping the register should be placed on the local authority, and that they should be liable for any neglect.

Evidence was given which satisfied the committee that provision should be made for registrars to get much more help and guidance in carrying out their duties. With this object, they suggest that the Lord Chancellor, exercising his function through the Chief Land Registrar, should be responsible for the making of rules, and for their administration. A rather novel suggestion was that an inspector should be appointed, with the duty of travelling round the registries giving advice and assistance, and securing, so far as possible, uniformity in methods of registration. It is possible that the associations of local authorities will not be very enthusiastic about such an arrangement, which may be thought to infringe on the independence of local authorities. On the other hand, there is much to be said for a system which would secure uniformity, and which would enable specialised officers to consider the difficult problems which often arise.

There was some evidence that a map index alone is unsuitable in the case of a built-up area. While the committee agreed that there is much to be said for a street index as well as a map index in towns, they considered that Ministerial authority should remain necessary for the substitution of any other form of index for a map index.

The committee commented that the joint effect of the "fragments of legislation" constituted by the various sets of rules was "almost unintelligible without employing someone to piece them together, and type out the result." They understood that consolidation was awaiting the report of the committee, and they expressed the view that it was urgently required.

Although personal searches are now rarely made, the committee concluded that the right to make them should be continued. Some evidence was given of delay in dealing with official searches, but it appeared that the delay was caused not by preparing the official certificates of search, but by answering supplementary inquiries. To answer these inquiries, it is usually essential that a clerk should obtain information from other departments, and it may be necessary to make an inspection of the property. Consequently, in very many cases, it will not be possible to complain about a few days' delay.

Planning Restrictions

The committee made an unqualified statement that "conditions attached to permissions granted under the [Town and Country Planning Act, 1947] are clearly registrable as prohibitions or restrictions." The writer cannot agree with this statement. An examination of the conditions customarily employed by local authorities shows that many of them are essentially limitations on the effect of the permission granted. In such cases there is no restriction on the use of land in the permission itself. The restriction is caused by the 1947 Act, and the so-called "condition" merely limits the effect of the permission. Secondly, very many conditions are mandatory; in other words, they require a positive act to be done. Elsewhere in their report the committee suggest that an amendment to s. 15 (7) should be made, to make it clear that registration of mandatory conditions is essential; in present circumstances, it is difficult to argue that this must be done. Consequently the writer is unable to see how the committee can properly say that a mandatory condition attached to a permission is clearly registrable.

The question then arises as to what should be done about the conditions attached to planning permissions granted under the Acts in force before the Act of 1947. It is sufficient to say that at the moment opinions differ as to whether these are registrable, but the committee suggest that legislation should provide for their registration.

A further small difficulty arises out of conditional planning permissions issued by the Minister, for instance those given on appeal from the decision of the local planning authority. These are not, at the present time, registrable, as they cannot amount to a restriction imposed by a local authority. The committee recommend that such conditions should be registered in the same way as those imposed by a local planning authority. In practice the omission to register them is not as serious as might appear, as the effect of all planning permissions, conditional or otherwise, will appear as the result of the supplementary inquiry asking for the contents of the Register of Planning Applications.

A number of similar problems arise in connection with consents to advertisements. These matters are not of first importance, and it is not proposed to deal with them.

Summary

The committee considered in some detail the duty of disclosure of certain local land charges by vendors. Their conclusions cannot well be tested except by reference to the duty of disclosure of land charges as a whole, and so this problem will form the subject of the last of this series of articles. Meanwhile, it is convenient to summarise the effect of the report as follows:—

(i) No great change in the form of registers is proposed. The idea of having one complete register of all matters now the subject of local searches and inquiries is considered impracticable.

(ii) Some extension should be made of registrable matters (e.g., compulsory purchase orders) but a list cannot be made specifying each type of charge needing registration.

(iii) Unregistered matters should not be avoided in favour of a purchaser, but he should be given a right to compensation.

(iv) Priority notices should be abolished as regards local land charges; a purchaser must take the risk of entries in the register after his search but before completion.

The effect appears, therefore, to represent a material improvement in the contents of registers and in the procedure for registration and searching, but there is no fundamental change in the system. It is no criticism of the work of the committee to say that problems are often identified rather than solved; in many cases a really satisfactory solution does not exist.

J. G. S.

A Conveyancer's Diary

VOLUNTARY TRANSFERS OF PROPERTY: THE ESSENTIAL REQUIREMENTS

THE *locus classicus* on what is required to make an effectual transfer of property by voluntary disposition is to be found in the judgment of Turner, L.J., in *Milroy* v. *Lord* (1862), 4 De G.F. & J. 264, at pp. 274–275: "In order to render a voluntary settlement valid and effectual, the settlor must have done everything which, according to the nature of the property comprised in the settlement, was necessary to be done in order to transfer the property and render the settlement binding upon him. He may, of course, do this by actually transferring the property to the persons for whom he intends to provide, and the provision will then be effectual, and it will be equally effectual if he transfers the property to a trustee for the purposes of the settlement, or declares that he himself holds it in trust for those purposes; and if the property be personal, the trust may, as I apprehend, be declared either in writing or by parol; but, in order to render the settlement binding, one or other of these modes must, as I understand the law of this court" [viz., the Court of Chancery] "be resorted to, for there is no equity in this court to perfect an imperfect gift. The cases I think go further to this extent, that if the settlement is intended to be effectuated by one of the modes to which I have referred, the court will not give effect to it by applying another of these modes. If it is intended to take effect by transfer, the court will not hold the intended transfer to operate as a declaration of trust, for then every imperfect instrument would be made effectual by being converted into a perfect trust. These are the principles by which, as I conceive, this case must be tried."

This passage has been accepted up till recently as an exhaustive statement of the law on this subject (see, for example, *Re Fry* [1946] Ch. 312, at pp. 315–316, and cf. Snell's Principles of Equity, 23rd ed., pp. 88–89). But in the course of his judgment in *Re Rose* [1951] 2 T.L.R. 1066, Roxburgh, J., observed of this passage (at p. 1068) that Turner, L.J., had not, apparently, contemplated "the possibility of a voluntary transfer of some beneficial interest in shares by the registered holder in advance of the transfer of the legal title," a possibility which, in the learned judge's view, had been established beyond dispute by two cases later in date than *Milroy* v. *Lord*. The judgment in *Re Rose* contains an analysis of these cases and their relation to *Milroy* v. *Lord*, the usually accepted effect of which must, I think, now be reconsidered so far as one particular kind of transfer is concerned.

The essential facts in *Re Rose* were as follows: By a transfer dated the 30th March a donor transferred to his wife 10,000 shares in the L Company. The L Company was a private company and its directors were empowered by its articles of association to decline to register any proposed transfer of shares at their absolute discretion without assigning any reason, but this transfer was in fact registered on the 30th June following the transfer. The donor was the governing director of the company, but it was conceded on both sides that this circumstance was immaterial to the question which had to be decided. The donor survived the date of the transfer of the shares by the statutory period for the purposes of the Finance Acts, but he did not so survive the date of the registration of the transfer, and the question was, therefore, this: Had there on the date of the transfer been a *bona fide* disposition of the shares, purporting to operate as an immediate gift *inter vivos*, under which *bona fide* possession and enjoyment of the shares was assumed by the donee immediately upon the gift? If yes, the shares escaped estate duty; if no, duty was payable on the shares as if they had formed part of the donor's estate at his death.

But for the later cases, Roxburgh, J., said that he would have been constrained, on the authority of *Milroy* v. *Lord*, to decide this question in the negative. But, as already stated, he felt that that decision did not cover the present case, on which there was no precise authority in the sense of a case with facts on all fours with those of the present case, but authority did exist which, in the judgment of the learned judge, justified an affirmative answer to the question which had arisen.

The analysis of these authorities and their application to the present case is exceptionally interesting. Taking the decision by stages, it was first held that *Re Williams* [1917] 1 Ch. 1 was authority for the proposition that there may be a gift, i.e., a transfer of the beneficial interest, in advance of registration. In that case the holder of a life policy gave the policy to the donee and indorsed it with an authorisation to draw the insurance moneys. The Court of Appeal held that the indorsement did not effect a valid gift of the policy, and to that extent this decision appears to be no more than an application of the principle in *Milroy* v. *Lord*, viz., that the donor had not done everything in his power to transfer the policy to the donee; but, as Roxburgh, J., pointed out in his judgment in the present case, if there could not, as a matter of principle, be any gift in advance of the transfer of the legal title, the question in *Re Williams* would have been not that which was there decided, but whether notice of the assignment of the policy had been given to the insurance company.

Secondly, it was held that *Re Rose* [1949] Ch. 78 was authority for the proposition that in that case there was a transfer of the beneficial interest in shares before registration. The testator executed a transfer of shares in favour of X, but the transfer was not registered until after X's death. By his will the testator bequeathed a similar number of shares to X if such shares had not been transferred to him previously to the testator's death. Jenkins, J., held that there had been a transfer of the shares given *inter vivos* before the death because the testator had done everything in his power to divest himself of the shares in the donee's favour. It was true that *prima facie* the question in that case arose on the effect of the bequest, i.e., had there been a transfer of shares, but in fact the question went further, because the transfer might have been one which had transferred no beneficial interest, and in that case X might have lost the shares altogether, and it is clear that the effect of the transfer on the beneficial title was before the court. On the effect of the necessity for registration to perfect X's legal title to the shares, Jenkins, J., held that as this was not an act which depended in any way on the testator, it did not affect his finding that the testator had done everything in his power to transfer the shares to X. Applying the decision in the earlier case of *Re Rose* to the present case, Roxburgh, J., concluded that the gift in the present case had been complete and that the beneficial interest in the shares had passed from the donor on the date of the transfer.

Finally, Roxburgh, J., held that *Nanney* v. *Morgan* (1887), 37 Ch. D. 346, was authority for the proposition that the

beneficial title of the donee was enforceable against the legal title of the donor from the date of the transfer. In that case trustees holding railway stock in trust for X absolutely executed a transfer of the stock in favour of X. The transfer was defective and the railway company refused to register it. X made a voluntary settlement of the stock, and subsequently the transfer in his favour was registered. X died, and the Court of Appeal held that X was the equitable owner of the stock at the time of the voluntary settlement, and that when he obtained the legal interest in the stock upon registration of himself as the proprietor he obtained it subject to a trust, so that his personal representatives after his death were bound to transfer the legal interest in the stock to the trustees of the voluntary settlement. This decision is not a very satisfactory one, at any rate as it appears in the reports, since of the three members of the court only Cotton, L.J., expressly dealt with the ownership of the equitable interest in the stock at the date of the voluntary settlement; he clearly considered it to be in X at that date. Sir James Hannen had nothing to add to the views of Cotton, L.J., and Lopes, L.J., dealt solely with the legal interest in the stock. But the decision is a clear authority for the proposition for which it was cited in the present case, that a registered holder of shares who previously to obtaining a legal interest has made a voluntary settlement or assignment of the equitable interest is bound to transfer or assign his subsequently acquired legal interest to the trustees of the settlement or assignee, as the case may be.

By these steps Roxburgh, J., reached the final conclusion that the whole beneficial interest in the shares had been transferred by the donor to the donee at the date of the execution of the transfer by him, and that the claim to estate duty therefore failed. To hold otherwise, as the learned judge pointed out, would have meant holding that there could be no gift by a registered holder by transfer before registration of the transfer, but only an imperfect gift; but that conclusion was not open to him having regard to the three cases above referred to. The effect of this decision, on the other hand, was to put a transfer by a legal owner and an assignment by an equitable owner on precisely the same footing.

Although the learned judge in the present case said that he would have been bound to decide it against the donee on the authority of *Milroy* v. *Lord* had it not been for the later cases, there is nothing in this present decision which is directly inconsistent with the statement of the law taken from Turner, L.J.'s judgment in the earlier case set out at the head of this article. But that statement can, I think, usefully be annotated by adding to the words " according to the nature of the property comprised in the settlement " the words " or the settlor's interest in the property, viz., whether legal or equitable," as a reminder that a failure on the part of the transferee to obtain the legal interest in any property from the settlor where such failure does not spring from any omission on the part of the settlor, does not *per se* render the transfer imperfect. Where the failure to obtain the legal estate is directly traceable to an omission on the settlor's part, the transfer is, of course, imperfect and will not be perfected at the instance of the purported transferee (*Re Fry, supra*).

The reported cases on this subject all deal with stocks and shares, but there is no reason to suppose that the principle underlying them does not apply equally to other property the transfer of which for a legal interest is attended with special requirements, e.g., registered land.

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Landlord and Tenant Notebook

PERMISSIVE BUT EXCLUSIVE OCCUPATION

UNHAPPY differences of the kind somewhat tearfully referred to in the recital of a deed of separation may have many consequences other than such as are provided for by such a deed. In *Errington* v. *Errington and Another* [1952] 1 All E.R. 149 (C.A.) one consequence may well be a difference between descriptions of the very relationship of landlord and tenant given in new editions of standard works and those given in present editions. That is to say, what is stated about the " exclusive possession " element is likely to undergo modification, and care will be taken to point out that a right to exclusive possession is not enough to make a grant the grant of a tenancy, as opposed to that of a licence. Many of us must, indeed, have felt that some revision of our ideas on the subject has been due for some time.

The plaintiff in *Errington* v. *Errington* was the mother-in-law of the first defendant, the second defendant being the daughter-in-law's sister. In 1936, four years after the first defendant had married, her husband's father (since deceased) had bought a house at the price of £750, mortgaging it to a building society, who advanced £500; he had told his son and daughter-in-law that he wanted them to have a house of their own, that he would put down £250 as a present for them, but that the house would go into his name; he handed the first defendant the building society book, and she had paid the instalments of 15s. a week ever since, first out of housekeeping money supplied by her husband and later out of moneys sent her for maintenance or from other resources. Rates had been paid by the father-in-law in accordance with a promise given some time after the purchase. It was soon after his death that the son decided to go and live with the mother and did so, the first defendant declining to join him and continuing the payments as described. The house passed to the widow.

The plaintiff claimed possession of the house on the footing that the occupation by the first defendant (and that of her husband) had been by virtue of a licence, which she had revoked. The defence pleaded (*a*) that the occupation had been occupation under a tenancy at will and the claim was barred by limitation, or (*b*) that the occupation had been occupation under a weekly tenancy (the payments to the building society being the rent) which was controlled. If (*b*) had had to be examined, we might have had some clues to the solution of what Mr. Megarry (p. 172 of the 6th ed. of his book) is pleased to call " happy problems " arising out of the vesting of a tenancy in two or more persons, one of whom dies; for it would seem that one of the two in this case had at least ceased to reside and done all he could to give up possession. It so happens, however, that the court approved none of the propositions advanced by either side.

The interpretation placed upon the agreement of 1936 was as follows: The purchaser undertook to convey the house to his son and daughter-in-law if they would pay the instalments; they did not undertake to pay those instalments, though it was to their advantage to do so; on default, their rights would come to an end (and the later this happened the more benefit to the grantor). Payment of rates was a voluntary gift.

What was the legal effect of this transaction which, said Somervell, L.J., was, as far as the researches of counsel and the court had gone, a legally novel, if a natural, one? According to the learned lord justice, there was an analogy between the position of the occupiers and that of a purchaser who has been let into possession pending completion. It followed that they were licensees, and their rights as such were stated in the judgment of Denning, L.J., with which Somervell, L.J., concurred.

Denning, L.J.'s view of the effect of the agreement was that it was a unilateral one, a promise of the house in return for the act of paying the instalments; once performance was begun, the promise given could not be revoked; it would, however, cease to bind the promisor if the act were left incomplete and unperformed. But there was no tenancy at will, because it is of the essence of such that it should be determinable by either party on demand. There was no tenancy at a rent, because there was no obligation to pay it. The only other possibility was that there was a licence, giving the couple a *permissive occupation short of a tenancy;* but with it a contractual right. And, as the law had developed, this meant that, while at common law a licence was revocable at will, giving the evicted licensee merely a right to damages, now, owing to the interposition of equity and its fusion with the law, *a licensor will not be permitted to eject a licensee in breach of a contract to allow him to remain* (*Winter Garden Theatre* (*London*) v. *Millennium Productions, Ltd.* [1946] 1 All E.R. 678 (C.A.)), nor even in breach of a promise on which the licensee has acted, though he gave no value for it (*Foster* v. *Robinson* [1951] 1 K.B. 149 (C.A.)).

One might recall that there was a time when the grantee of a tenancy had only a right to damages if turned out; and that it was not equity that improved his position, nor was it Parliament. The process was one of invention of new writs, begun by one William Raleigh, in 1235; these, plus the interpretations in the matter of scope accorded by common law judges, made the tenant the owner of a "chattel real" by the end of the fifteenth century.

It is possible, too, that the invention, this time by Parliament, of what is called a "statutory tenancy" may have had some influence on the law of licensor and licensee, for when we come to consider what the new test is to be we find that there is a considerable resemblance between the rights of a licensee with a contract and a "statutory tenant" with none. Each has a right of use and enjoyment—and no right of disposal.

For another element likely to be of importance in such cases as *Errington* v. *Errington* is what I might call the "I'm doing this for you, though I wouldn't do it [or at least "be doing"] for anyone else" element. This has been present even in cases in which a Government department has been held to be licensor. In *Minister of Health* v. *Bellotti* [1944] K.B. 298 (C.A.), in which possession was claimed from Gibraltar evacuees housed in requisitioned flats, Lord Greene, M.R., commenced his judgment by saying: "The controversy out of which this litigation arises is a sorry business," and in connection with length of notice (the "substantial issue") observed: "This is not a case of a licence granted on commercial lines, nor is it a licence granted out of mere friendship or kindness. It was a licence granted by a department of State under a very high duty to persons who," etc. Denning, L.J., cited this and two other requisitioned land cases (*Southgate B.C.* v. *Watson* [1944] K.B. 541 (C.A.): bomb victims; *Minister of Agriculture and Fisheries* v. *Matthews* [1950] 1 K.B. 148: dispossession for bad husbandry followed by "tenancy" granted to defendant) in support of his proposition that "although a person who is let into exclusive possession is, *prima facie*, to be considered a tenant, nevertheless he will not be held to be so if *the circumstances negative* any intention to create a tenancy." But in these cases it was admitted or transpired that the grantors concerned had no power to grant tenancies, and I suggest that better support for the proposition can be found in other cases referred to by the learned lord justice: *Foster* v. *Robinson* [1951] 1 K.B. 149; (1950), 94 SOL. J. 474 (C.A.), in which an ex-employee was given a "rent-free" interest for life (see 94 SOL. J. 530); and *Marcroft Wagons, Ltd.* v. *Smith* [1951] 2 K.B. 496 (C.A.), in which "rent" had been accepted from the daughter of a deceased protected tenant, after her mother's death, because the landlords (who had employed her father) did not wish to disturb her, and Evershed, M.R., deplored (see 95 SOL. J. 535) the possibility that indulgence on a bereavement might produce a relationship under which it would be impossible for a grantor to recover what he could otherwise have recovered. To the same effect was *Booker* v. *Palmer* [1942] 2 All E.R. 674 (C.A.), in which an arrangement that bomb victims should occupy a cottage was held to constitute a mere licence.

In what circumstances intention to create a tenancy will be negatived may not always be an easy question, but I suggest that the new decision and the authorities cited invite a test on these lines: A grant conferring the right of exclusive possession is not to be regarded as a grant of a tenancy if the circumstances are such that neither party could have contemplated that the grantee's interest should be assignable.

R. B.

PRACTICAL CONVEYANCING—XLIV

SALE BY A SURVIVING JOINT TENANT

FOLLOWING a somewhat provocative article published at 95 SOL. J. 828, a number of readers have been good enough to write to the Editor expressing their views on a surviving joint tenant's right to convey. Three of these letters express differing points of view, all worthy of consideration, and so it is proposed to use them as a basis for summing up the issues and the merits of various conclusions.

It is assumed that a legal estate in fee simple has been conveyed to two persons as joint tenants beneficially. Normally a conveyance after 1925 will have been so drawn as to state that those persons hold the legal estate upon trust to sell it and to hold the proceeds, and the rents until sale, for themselves as joint tenants beneficially. Even if there was no such express trust for sale similar trusts would arise under the Law of Property Act, 1925, s. 36 (1).

No severance of the joint tenancy of the *legal* estate is possible (Law of Property Act, 1925, s. 36 (2)). Consequently, on the death of one of the joint tenants, the legal estate will vest in the survivor. *Prima facie* one would conclude that he could sell in pursuance of the trust for sale and that the purchaser would get a good title. But has s. 27 of the 1925 Act any effect? First, it provides that a purchaser of a legal estate from trustees for sale shall not be concerned with the trusts affecting the proceeds whether or not they are declared by the same instrument by which the trust for sale is created. So far, the position is most satisfactory to a purchaser. However, subs. (2) states that the proceeds of sale shall not be paid to fewer than two individuals as trustees. Consequently, this line of reasoning, based on the protection given to a purchaser by a trust for sale, breaks down.

What then is the position in equity? A severance of the *equitable* joint tenancy so as to create an equitable tenancy in common is possible. If no severance took place the survivor is entitled to the whole legal and equitable estate; in this event he can sell to a purchaser who will get a good title. In doing this (i.e., on the assumption that there is no severance) he does not rely on the trust for sale. The Law of Property (Amendment) Act, 1926, inserting new words into s. 36 (2) of the 1925 Act, provided that "Nothing in this Act affects the right of a survivor of joint tenants, who is solely and beneficially interested, to deal with his legal estate as if it were not held on trust for sale." It is fairly clear that this addition was an unnecessary precaution; so far as one relies on the beneficial ownership and not on the "curtain" provisions of the trust for sale nothing in the 1925 legislation did affect the right of a survivor *who was in fact solely and beneficially interested.*

There are, then, two main lines of argument. The first is that the survivor is entitled to both the legal and equitable estates and so can sell as sole beneficial owner. The objection to this argument is that it is dependent on the assumption that there has been no severance in equity. Now severance may occur in many ways, some of them being unilateral acts of one joint tenant which might not even be known to the survivor. It is said, therefore, that one cannot safely rely on this argument.

The second view is that, for the reasons given above, one must rely on the protection given by the trust for sale and, in order to do so, appoint another trustee to act jointly with the survivor. This is inconvenient and clients can be expected to have difficulty in understanding the need for it. An objection might be raised that if, as is usual, the survivor is solely entitled in equity, the trust for sale has come to an end and so this procedure is not available. This objection is met by a reference to the Law of Property Act, 1925, s. 23, which enacts that where land has become subject to a trust for sale, such trust shall, so far as regards the safety and protection of any purchaser thereunder, be deemed to be subsisting until the land has been conveyed to or under the direction of the persons interested in the proceeds of sale. Therefore, even if the survivor is solely entitled in equity, it is argued that *for the protection of a purchaser thereunder* (but not for any other purpose) the trust is deemed to continue. So the conclusion of this reasoning is that one cannot go wrong by appointing a new trustee whereas one may go wrong by not doing so.

The writer of the article at 95 SOL. J. 828 asserted that it was an error to assume that a trust for sale which has ceased to exist remains notionally a trust for sale for the protection of purchasers by virtue of s. 23. He then suggested that a declaration should be inserted in a conveyance by the survivor that he was entitled to sell as beneficial owner, and that this should be reasonably sufficient.

An objection to this view has been expressed by Mr. Henry Gandy, of Messrs. Wilkinson & Marshall, of Newcastle, in these words:—

> "It is surely clear that on a sale by a surviving joint tenant who has the entire legal and beneficial interest, a purchaser can accept the title *provided he is satisfied by proper evidence that there has been no severance of the equitable joint tenancy.* It is by no means clear, however, that a purchaser should, as your contributor suggests, accept a mere statement by his vendor as adequate evidence; nor is this suggestion in any way supported by his reference to statements in an assent, which have statutory sanction.
>
> Even if the trusts of the will are referred to in a conveyance on trust for sale, it may well be that by the time the property is sold the entire beneficial interests under the will have, by purchase or otherwise, become vested in a surviving trustee, who has appointed a second trustee. In such a case, on your contributor's contention, there would have been a merger of the legal and beneficial interests, and the appointment of a new trustee would be ineffective. Must a purchaser in every case satisfy himself that there has been no such merger? This is the result to which your contributor's argument leads.
>
> It is submitted that in either case s. 23 of the Law of Property Act, 1925, safeguards a purchaser who pays his purchase money to two trustees. The trust is for his protection '*deemed* to be subsisting' until conveyance. There is no inconsistency between s. 23 and s. 36 (2). The latter is merely declaratory. The former is part of the 'curtain' provisions of 1925, any attempt to minimise which is surely to be deprecated. What matter if a 'fictitious' trust is sometimes created? It is just another bit of useful statutory magic.
>
> It is interesting in passing to observe the phrasing of s. 36 (2), '*as if* it were not held on trust for sale.' The words 'as if' would naturally imply that the trust for sale still subsists, but this can hardly be intended. It would, however, have been better to use the words 'free from the trust for sale previously existing'."

The present writer agrees entirely with the reasons given in this letter why a sale under the trust is valid. The question of evidence of absence of severance will be mentioned later.

The point that the suggested declaration in the conveyance has no statutory validity was taken in similar terms by Mr. C. H. Lea, of Messrs. Harold Roberts & Lea, of Birmingham. Mr. Lea also wrote:—

> "The essential point when acting for a purchaser in a purchase from a surviving joint tenant would seem to be to ascertain whether the trust for sale has come to an end or not, and in my view the mere fact that one of the joint tenants has died is no evidence on this point. Consequently, before a purchaser accepts a title from a surviving joint tenant *he is entitled to evidence that the trust for sale has come to an end*, which the writer of the article admits it is difficult for the surviving joint tenant to supply. Unless the surviving joint tenant can produce such evidence, he cannot prove for the purpose of s. 36 (2) that he is solely and beneficially interested, nor can it be said for the purposes of s. 23 that the trust for sale has come to an end."

These letters well express the widely held opinion (correct, in the writer's view) that one is quite safe if one adopts the procedure of appointing a new trustee. They also emphasise the problem of obtaining evidence that there has been no severance if one wishes to avoid the use of that procedure. On this question of evidence a letter from Mr. Richard A. Holland, of Messrs. Holmes, Campbell & Co., of Arundel, seems to the present writer to be most significant. Mr. Holland writes that there are three factors which appear to him to justify reliance on s. 36 (2) and he states these factors as follows:—

> "First, the relevant part of s. 23 re-enacted s. 10 (3) of the Conveyancing Act, 1911, which was intended to overcome the difficulty that when beneficiaries under a trust for sale were *sui juris* and wholly entitled they might have directed the trustees not to sell. It will be noticed that the section applies only 'so far as regards the safety and protection of any purchaser' and it is submitted that it could not therefore operate to the prejudice of a purchaser.
>
> Secondly, because the part quoted of s. 36 (2) commences with the words 'Nothing in this Act affects . . .' it operates to reduce *pro tanto* the effect of s. 23, and s. 23 can accordingly be read as if there were added a proviso that the presumption of the continuance of the trust for sale does not affect the right of the survivor of joint tenants who is solely and beneficially interested to deal with his legal estate.
>
> Thirdly, those conveyancers who assert that in view of the uncertainty which might exist as to whether a joint tenancy had been changed into a tenancy in common (in which case the trust for sale would continue) are saying that it is a vendor's duty to prove a negative. Channell, J., in *Over* v. *Harwood* [1900] 1 Q.B. 803, at p. 806, said: 'Generally the only way of proving a negative is by

presumption,' and on p. 484 of Williams on Title it is (in my opinion, correctly) stated :—

> 'In conveyancing the vendor produces all the deeds and other evidence relating to the title in his possession, and then so far as a negative is concerned the purchaser must generally be satisfied to presume the negative from the absence of evidence of the positive or at the most with the vendor's answer to a requisition asking whether he or his solicitor has any knowledge of the matter in question. The matter can be carried no further and the purchaser's safeguard is his right to an action on the covenant for title if the presumption or answer to the requisition prove to be ill-founded.'

Once it has been shown that there were legal and beneficial joint tenants of whom one only is surviving, it seems clear that the survivor is *prima facie* able by himself to make a good title, and to allege the contrary is to ask a vendor to show that a particular matter prejudicial to the title has *not* taken place. This principle could easily be extended ; for instance, a vendor might be asked to prove that he had not sold part of the property, as even without a memorandum endorsed on the vendor's conveyance a prior purchaser would obtain a better title."

There is no doubt but that the appointment of a new trustee is inconvenient. The essential problem seems to the present writer to be as follows : the surviving joint tenant asserts that he is solely and beneficially entitled ; the purchaser will not get a good title unless that is the case and so he asks for evidence that there has been no severance ; the vendor admittedly cannot prove a negative ; if the vendor offers (at the purchaser's expense: Law of Property Act, 1925, s. 45 (4) (*b*)) all evidence he can produce (e.g., a statutory declaration) that there has been no severance, can the purchaser insist on appointment of a new trustee ?

The present writer agrees with the arguments of Messrs. Gandy and Lea that one is safe in any event in taking a title made by two trustees. Therefore, a solicitor may be justified in advising a vendor to adopt this procedure. Nevertheless, the present writer agrees with Mr. Holland that a vendor is not failing in his duty if he cannot prove a negative. (Incidentally, did not the same problem arise on the sale by a surviving joint tenant before 1926, when title was accepted without positive proof of non-severance ?) It follows that a vendor who asserts that there has been no severance and who is prepared to do all he can to prove that fact cannot, in the present writer's opinion, be called on to appoint a new trustee. There will be no end to this controversy until an authoritative decision is obtained. Meanwhile we suggest that, in practice, particularly in the simple case of the sale by the survivor of husband and wife of the house they jointly occupied, solicitors for purchasers may properly accept title from the survivor selling as beneficial owner.

J. G. S.

HERE AND THERE

SWOPPING HORSES

SINCE, as the Portuguese peasants say, my neighbour's cow is always better than mine and since we are all convinced that everybody else's job is money for jam, it's wonderful how few of us ever get around to trying something new, making a clean sweep and a fresh start. But it does happen. Chartered accountants and tax-skilled Civil Servants have taken the leap in the half-dark, landing safe, sound and eventually a good deal better off, at the Revenue Bar, and only this year one of the most eminent and successful of the court shorthand-writers has abandoned his profession and gone forth from his firm to seek his fortune at the Parliamentary Bar. If the wind that bloweth where it listeth ever whispered to me to start my life in the law anew (assuming, that is, that I resisted the superior attractions of becoming a Downland shepherd or a farmer in New Zealand or a holy hermit on one of Ireland's Atlantic islands) I should be hard put to it to choose between the rival attractions of being a country solicitor or an advocate at the Scottish Bar. Few country solicitors are as articulate in the matter of their life's background as the late Reginald Hine of Hitchin (" the un-common attorney "), but between that and other information received and one's own deductions and inferences, it is possible to form a conception of a life more attractive (at least for the vigorous and the independent) than one passed between an office, however imposingly situated, a suburb, however exclusive, and a golf club, however select, the destiny of most well-to-do London solicitors. To many Englishmen the Scottish Bar may seem a somewhat eccentric and even esoteric aspiration, but that is only because they know so very little about the Parliament House in Edinburgh and its inhabitants. (This Parliament House is to the Scots lawyer what Westminster Hall once was to us.) The Scottish Bar is a small and very cosy little family party. The advocates have none of the expenses of chambers and clerks which are such a heavy charge on their English brethren, for their work is conducted by day in and about their library and in the evening at home. All this and the charm of living in Edinburgh too—a city just the right size, still conscious of breathing the air of hills and the sea.

JUDGES AT SEA

THE hills (so remote from the bricked-in Londoner) with the fish in the stream and the game on the wing are never so very far from the Parliament House. But the sea ? I've only just heard how that comes right into its life. You know (at least you ought to know) that Trinity House has charge of our English lighthouses, having been responsible for them since the time of Henry VIII. Would you think it odd if it were the county court judges ? Well, that's approximately the position in Scotland, where their opposite numbers constitute the body known as the Commissioners of Northern Lighthouses. Roughly speaking (forgive me for being rough but it would take too long to smooth out all the differences) the Sheriff Court is the equivalent of our County Court. There sits the Sheriff Substitute, and if you want a relatively cheap appeal from his decision, you go up to the Sheriff Principal (a part-time judge like a Recorder), or if you're ready for a more expensive litigious jaunt you go up to the Court of Session (High Court to us). Now it's the Sheriffs Principal who look after the lighthouses or at any rate those among them with jurisdiction over maritime districts, and that's virtually all of them. They meet in Edinburgh and that's apt to be rather dull, but they get their reward in the first fortnight of the summer vacation, for then a palatial steam yacht is at their disposal for a tour of the northern lights and it's up anchor and outward bound for the Orkneys and the Shetlands, and if they're a shade too late to hear the cuckoo bird breaking the silence of the seas, among the farthest Hebrides, I don't suppose they worry very much. They climb up hundreds of steps. They boost the morale of solitary men leading an ivory tower existence in the midst of the envious siege of contrary Neptune. They may drop anchor at Dublin for a little festive courtesy to maintain friendly relations with the Irish lighthouse authorities. A very good time is had by all and since there's not room for more than a dozen Commissioners on the trip they take those with the best record of attendances at the meetings for the previous year. The meetings are remarkably well attended.

BREACH OF CONTRACT

RATHER ungratefully, I thought, one of the popular papers used the *Dunhill* v. *Wallrock* case as a text for a self-righteously pontifical call for the discontinuance of breach of promise actions. Ungratefully, because this particular case had everything that Fleet Street loves and thrives on in a civil action : King's Counsel fighting with the weapons and metaphors of another day ; angels with flaming swords ;

roaring lions; cooing sucking doves; a judge on to whom a slick label could be fastened, "the hot-shorthand judge" (for Cassels, J., knew the Press Gallery of the House of Commons before he knew the Temple); slices of judicial wisdom. ("It might be that neither party would be chosen to represent a typical saint." Yes, it might.) All this is jam for the Press and one hardly feels that the news editors would seriously like to see the end of it. But apart from the obvious advantages to the newspapers and, of course, to the lawyers, surely this is the very sort of situation which the breach of promise action fits, if it fits no others. For the young and for the romantic it may be a ridiculous anti-climax. But here two persons of sound mind and mature age arrange their lives (as it seems to them) to their mutual advantage. A promise of marriage is admittedly made and admittedly broken. The lady (well to do) brings her action against the gentleman (wealthy). The evidence suggests neither passion nor emotion. It is a plain issue of what financial advantage the lady has lost by not becoming the wife of the gentleman. She recovers £11,000. It is really rather pointless for one of the leading articles to compare this with damages recovered in personal injuries cases. It's chalk and cheese, hawks and hand-saws. One might as well compare the £10,000 awarded to a boy who lost his hands with the far larger sums that may be recovered on building contracts or bills of exchange. Some breach of promise cases may have sentimental complications, insoluble in terms of currency and economics; this one was pure breach of contract—in spite of the angels and the lions.

RICHARD ROE.

NOTES OF CASES

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

CANADIAN WAREHOUSE FIRE: LIABILITY OF LESSORS

Canada Steamship Lines, Ltd. *v.* R.

Lord Porter, Lord Normand, Lord Morton of Henryton, Lord Asquith of Bishopstone and Lord Cohen. 21st January, 1952

Appeal from the Supreme Court of Canada.

By a lease made in 1940 the appellants leased from the Crown a freight shed on a wharf in Montreal harbour. By cl. 7 of the lease: "the lessee shall not have any claim or demand against the lessor for . . . damage . . . to the said shed . . . or to any . . . goods . . . at any time . . . being . . . in the said shed." By cl. 17: "the lessee shall at all times indemnify . . . the lessor from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings . . . brought . . . in any manner based upon, occasioned by or attributable to the execution of these presents, or any action . . . done . . . by virtue hereof . . ." The lessors also covenanted to keep the premises in repair. In May, 1944, certain workmen in the employ of the Crown were doing repairs to the shed, in the course of which they were using an oxy-acetylene blowpipe. Sparks fell on some bales of cotton waste, with the result that fire broke out, and the shed and all the goods in it were destroyed. A large number of petitions of right were then presented by the appellants and other owners of the goods destroyed, alleging negligence against the Crown. The Crown denied negligence; contended that any liability for negligence was negatived by cl. 7, and brought in the appellants as third parties to the other petitions under cl. 17, contending that this constituted an indemnity by the appellants to the Crown in respect of any negligence. At the trial at first instance the appellants' and five other petitions were heard; the court found that there had been gross negligence (*faute lourde*), and awarded damages to all the suppliants. On appeal, the Supreme Court held that there had been negligence, but not *faute lourde*, and allowed the appeal as against the present appellants on the Crown's contentions regarding cll. 7 and 17. The appellants appealed to the Judicial Committee by special leave.

LORD MORTON OF HENRYTON, delivering the judgment of the Board, said that although there was a close relationship between cl. 7 and cl. 17, cl. 7 when read by itself did not, in clear terms, limit the liability of the Crown for negligence. As to cl. 17, it was doubtful whether a negligent act done in the course of carrying out the duty to repair could be construed as an "action done by virtue hereof"; and even if the words were sufficiently wide to cover an act of negligence, the principle laid down in *Alderslade* v. *Hendon Laundry, Ltd.* [1945] 1 K.B. 189 would apply; thirdly, the ambit of cl. 17 was by no means clear, so that it did not avail the Crown. Accordingly, as the Crown no longer contested the issue as to ordinary negligence, the appellants must succeed both on the issue of liability under cl. 7 and on the issue as to indemnity under cl. 17. Their lordships would humbly advise His Majesty that the appeal should be allowed.

APPEARANCES: *Geoffrey Cross*, K.C., *Hazen Hansard*, K.C. (of the Canadian Bar), and *R. O. Wilberforce* (*Lawrence-Jones and Co.*); *A. J. Campbell*, K.C., *D. W. Mundell*, K.C. (both of the Canadian Bar), and *F. Gahan* (*Charles Russell & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

COURT OF APPEAL

NATIONAL HEALTH SERVICE: VESTING OF HOSPITALS: INTERESTS HELD SOLELY FOR PURPOSES OF HOSPITAL

***In re* Marjoribanks and Others Trust Deed; Frankland *v.* Ministry of Health**

Evershed, M.R., Birkett and Romer, L.JJ. 19th December, 1951

Appeal from Wynn Parry, J.

A home for incurables was carried on under a trust deed. Immediately before the coming into operation of the National Health Service Act, 1946, viz., before 5th July, 1948, all the property vested in the trustees formed part of or was used for the purposes of the home, but the trust deed gave the trustees power to use the property for other charitable purposes. Wynn Parry, J., following his own decision in *Minister of Health* v. *Fox* [1950] Ch. 369, 377, held that all interests in the home were held immediately before the appointed day by the trustees solely for the purposes of the home within the meaning of s. 6 (1) of the Act of 1946, and that the home had vested in the Minister.

EVERSHED, M.R., reading the judgment of the court, said that the relevant words of s. 6 (1) required the simple question to be asked and answered in reference to the appointed day: "On that day, for what purposes did the trustees hold the land?" The answer here must be for the purposes of the home and no other. It followed that the appeal must be dismissed and that *Minister of Health* v. *Fox, supra*, was rightly decided.

APPEARANCES: *Charles Russell*, K.C., and *H. E. Francis* (*Farrer & Co.*, for *Field & Sons*, Leamington Spa); *Sir Wynn Ungoed-Thomas*, K.C., and *Denys Buckley* (*Solicitor to Ministry of Health*); *Raymond Walton* (*Farrer & Co.*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

CHANCERY DIVISION

INCOME TAX: MILLS FACTORIES ALLOWANCE: GAS WORKS

Blunson (H.M. Inspector of Taxes) *v.* West Midlands Gas Board

Donovan, J. (sitting as an additional judge) 17th December, 1951

Case stated by Special Commissioners.

The respondent board owned a gasworks and received mills factories allowance in respect of it under the Finance Act, 1937, s. 15. The board claimed that the allowance referred only to four specified buildings of the gasworks and that it was entitled to an allowance under the Income Tax Act, 1945, s. 2 (1), in respect of the other buildings. The Crown contended that the entire gasworks were covered by the mills factories allowance and that the board was, therefore, not entitled to a deduction under the Act of 1945. The Commissioners decided in favour of the board and the Crown appealed.

DONOVAN, J., said that the Commissioners had stated that it was decided in *Largo and Lundin Links Gas Co., Ltd.* v. *Smith* (1922), 8 Tax Cas. 296, that the mills factories allowance did not extend to the whole of the gasworks but only to those buildings which were similar in character to mills or factories. But that was not so; the court had decided nothing at all on

that point. Consequently, the Commissioners had not considered the question whether the whole of the gasworks were premises "being mills, factories or other similar premises" within s. 15 (1) of the Act of 1937, but had considered that their task was to determine which of the buildings comprising the gasworks were such premises. The erroneous view which the Commissioners had taken involved the consequence that the case would have to go back to the Commissioners. In view of the language of s. 15, it would not be the right approach to consider each building separately, but its part in the entire manufacturing process should be taken into account. A building might fairly be said to be among the premises which together warranted the description of factory if what went on in the buildings was one of a chain of operations designed at the end to yield the manufactured article. Appeal allowed.

APPEARANCES: *Frederick Grant*, K.C., and *R. P. Hills* (*Solicitor of Inland Revenue*); *Cyril King*, K.C., and *F. N. Bucher* (*Sherwood & Co.*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

WILL: GIFT OF PERSONALTY SUBJECT TO CONDITION PRECEDENT: CONDITION VOID AS PERPETUITY

***In re* Elliott; Lloyds Bank, Ltd. *v.* Burton-on-Trent Hospital Management Committee**

Harman, J. 19th December, 1951

Adjourned summons.

In his will made on 26th May, 1943, the testator appointed the bank as his executor and trustee and after a direction to convert his estate into money gave "the sum of £100 to the Burton-on-Trent Infirmary to be invested as the bank shall direct for the purpose of maintaining and renovating my grave and headstone, and subject to the Burton-on-Trent Infirmary accepting the above £100 and the terms as above attaching thereto then I give to the said Burton-on-Trent Infirmary the rest, residue and remainder of my estate to be applied to the general purposes of the said infirmary." The infirmary vested on 5th July, 1948, in the Minister of Health, by virtue of the National Health Service Act, 1946, and was managed by the Burton-on-Trent Hospital Management Committee.

HARMAN, J., held that this was a gift of personalty which was subject to a condition precedent that was void as creating a perpetuity. *Reynish* v. *Martin* (1746), 3 Atk. 330, and *In re Moore* (1888), 39 Ch. D. 116, 131, appeared to be authority that in this connection the distinction between *malum in se* and *malum prohibitum* was imported into the English law from civil law when the courts of equity took over the administration of estates from the ecclesiastical courts. According to that doctrine of civil law, precedent conditions attached to a gift of personalty avoided the disposition when the precedent condition was illegal as being *malum in se*, e.g., to kill a person or burn his house, but where the illegality was *malum prohibitum*, that is, against a rule or policy of State, the condition was bad and the gift was good. The present illegality was of the second kind. Consequently, the management board could take the gift of the residue unfettered by the condition.

APPEARANCES: *M. J. Albery* (*Wright & Bull*, for *R. W. Skinner and Son*, Burton-on-Trent); *F. E. Skone James* (*Sharpe, Pritchard & Co.*); *Sir Lynn Ungoed-Thomas*, K.C., and *A. A. Baden-Fuller* (*George Thatcher & Son*, for *A. H. & H. W. Timms*, Burton-on-Trent).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

INCOME TAX: DEDUCTIONS: MONEY PAID BY WAY OF COMPROMISE AND FOR LEGAL COSTS

H. Golder (H.M. Inspector of Taxes) *v.* Great Boulder Proprietary Gold Mines, Ltd.

Donovan, J. (sitting as an additional judge). 15th January, 1952

Case stated by Special Commissioners.

The respondent company was a gold-mining company; its main object was gold-mining but its objects included also the promotion of other companies. In 1934 and 1935 it had been concerned in the promotion of three English companies associated with a group of gold-mining companies and was responsible for the issue of prospectuses for those companies. In September, 1940, the respondent company went into voluntary liquidation, but in June, 1943, the liquidation was stayed and an entirely new board of directors was set up. While the company was in liquidation, certain persons served writs on it claiming damages for alleged representations made in the prospectuses in the issue of which the respondent company was concerned; those allegations had never been admitted or proved. In 1946, the new directors, acting on the advice of counsel and solicitors, paid the plaintiffs a considerable sum by way of compromise, mainly because they wanted to avoid publicity in the City and to pay dividend as soon as possible, and also because they wanted to avoid legal costs. The Commissioners held that the compromise payment and legal costs incidental to the settlement were moneys "wholly and exclusively laid out or expended" for the purposes of the company's trade and were deductible from the company's taxable profits under r. 3 (*a*) of the rules applicable to cases I and II of Sched. D to the Income Tax Act, 1918. The Crown appealed.

DONOVAN, J., said that it could not be maintained that the sum paid by the respondent company was damages or akin to damages for deceit or fraud because the allegations against the company, though serious and weighty, were never admitted or proved. Moreover, the sum was in express terms paid in consideration for an undertaking by the plaintiffs not to sue or continue to sue the company. This sum could not, therefore, be assimilated to the payment of a penalty for an admitted infraction of the law which was in issue in *Inland Revenue Commissioners* v. *Alexander von Gleyn & Co., Ltd.* (1920), 12 Tax Cas. 232. On the evidence, the Commissioners had found as they did, and he (the learned judge) could not interfere; he could not say that they were bound to hold in law that the sums deducted were not disbursements. Appeal dismissed.

APPEARANCES: *F. Heyworth Talbot*, K.C., and *R. P. Hills* (*Solicitor of Inland Revenue*); *F. N. Bucher* (*Linklaters & Paines*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

ASSAULT IN CLUB: OBLIGATIONS OF PROPRIETOR

Ecker *v.* Old Quebec Club Co., Ltd.

McNair, J. 21st January, 1952

Action.

The plaintiff was a member of a proprietary club owned by the defendants. On the night of 27th December, 1949, while the plaintiff was in the club, a party of young men, who had earlier in the evening been refused admittance, again tried to force their way in. While the police were being telephoned, a fight took place in the lobby in the course of which the plaintiff was struck on the head by a bottle by one of the intruders. He sued the defendants for damages for personal injuries, claiming that there was an implied term in his contract of membership, and claiming also in tort as an invitee. The defendants denied liability.

MCNAIR, J., said that the measure of duty owed to the plaintiff was substantially the same both in contract and in tort. The duty of an occupier to an invitee, as laid down in *Indermaur* v. *Dames* (1866), L.R. 1 C.P. 274, was that the occupier should use reasonable care to prevent damage from unusual danger, of which he knew or ought to know. In *London Graving Dock Co., Ltd.* v. *Horton* [1951] A.C. 737, it was said that "unusual" had an objective meaning indicating such danger as was not usually found in fulfilling the function which the invitee had in hand. It appeared to have been laid down in *Morton* v. *William Dixon, Ltd.* [1909] S.C. 807, cited in *Paris* v. *Stepney Borough Council* [1951] A.C. 367, that a plaintiff must prove that other persons did not behave as the defendant in similar circumstances, or that such a fact was so obvious that proof of it was unnecessary. In the present case the test to be applied seemed to be whether the defendants owed a duty to take reasonable care to guard the members of the club against danger from intruders, if such was reasonably to be expected. The question was whether the entry of the intruders, resulting in the injury to the plaintiff, was due to negligence in law on the part of the defendants. He (his lordship) was unable so to hold. It could not be said that there was a duty on the defendants to employ a commissionaire; or that they should have bolted the door after the first attempt at intrusion; it would not be reasonable for a club to bolt the door when members desired entry. The plaintiff's claim would be dismissed.

APPEARANCES: *G. G. Blackledge*, K.C., *D. J. Turner-Samuels* and *O. Stocker* (*Matthew Trackman & Co.*); *Gilbert Dare* (*L. Fior*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

PAKISTANI RULER: QUESTION OF SOVEREIGN STATUS

Sayce *v.* Ameer Ruler Sadiq Mohammed Abbasi, Bahawalpur State

McNair, J. 21st January, 1952

Appeal to judge in chambers.

In 1950 the plaintiff issued a writ against the defendant, claiming damages for breach of contract. The defendant entered a conditional appearance and applied by summons to have service of the writ set aside on the ground that he possessed sovereign status. The master ordered the service to be set aside. On appeal the judge in chambers adjourned the summons into open court. A letter from the Commonwealth Relations Office stated that the defendant had been recognised until 15th August, 1947, as the ruler of an Indian State under the suzerainty of His Majesty; that thereafter, under the provisions of the Government of India Act, 1935, and of the Indian Independence Act, 1947, and of instruments of accession under those Acts executed by the defendant with the purpose of acceding to the Dominion of Pakistan, a change of status had taken place, and the letter concluded by certifying "that the State of Bahawalpur is not a part of His Majesty's dominions and that the Ameer, within the limitations imposed upon him by the constitutional arrangements set out above, is Sovereign Ruler of the State."

McNair, J., said that it appeared from *Luther* v. *Sagor & Co.* [1921] 3 K.B. 532, though there was no precise authority on the point, that the material time at which the relevant facts had to be determined was the date of the hearing and not the date of issue of the writ. The statements in the letter from the Commonwealth Relations Office were clear and unequivocal. A statement from such a source that the State in question was not within His Majesty's dominions was conclusive (see *"The Fagernes"* [1927] P. 311). Similarly, it followed from *Duff Development Co., Ltd.* v. *Government of Kelantan* [1924] A.C. 797, and *"The Arantzazu Mendi"* [1939] A.C. 256, that statements made on behalf of the Crown regarding the sovereign status of individuals were conclusive, and were the only sources from which the court could inform itself of such matters. Although it had been necessary to examine the constitutional provisions which imposed the limitations referred to in the letter, in order to understand what such limitations were, it was not open to the court to question the statements of fact in the certificate. It was also not open to the court to pronounce upon questions relating to the status of component parts of the dominion, or to inquire as to how recognition of the defendant in accordance with the certificate was consistent with the recognition of the status of Pakistan in *Kahan* v. *Pakistan Federation* [1951] 2 K.B. 1003. In view of the terms of the certificate the appeal must be dismissed.

Appearances: *G. G. Blackledge*, K.C., and *Durai Chinna* (*Stanley Johnson & Allen*); *Scott Henderson*, K.C., and *H. G. Garland* (*Seagrove, Woods & Simmons*).

[Reported by F. R. Dymond, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Aerated Waters Wages Council (Scotland) Wages Regulation (Amendment) Order, 1952. (S.I. 1952 No. 67.)

Boot and Floor Polish Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1952. (S.I. 1952 No. 72.) 8d.

Cardiff Water (Extension) (No. 2) Order, 1951. (S.I. 1951 No. 2335.) 5d.

Injury Warrant, 1952. (S.I. 1952 No. 60.) 8d.

London-Edinburgh-Thurso Trunk Road (Pass of Birnam and Other Diversions) Order, 1952. (S.I. 1952 No. 92.)

Parish Council Election Rules, 1952. (S.I. 1952 No. 91.) 11d.

Rope, Twine and Net Wages Council (Great Britain) Wages Regulation Order, 1952. (S.I. 1952 No. 79.) 11d.

Safeguarding of Industries (Exemption) (No. 1) Order, 1952. (S.I. 1952 No. 87.)

Sales by Auction and Tender (Control) (Revocation) Order, 1952. (S.I. 1952 No. 102.)

Superannuation (Local Government Staffs) (National Service) (Amendment) (Scotland) Rules, 1952. (S.I. 1952 No. 75 (S. 7).) 5d.

Telegraph (British Commonwealth and Foreign Written Telegram) Amendment No. 2 Regulations, 1952. (S.I. 1952 No. 88.)

Ulster and Colonial Savings Certificates (Income Tax Exemption) Regulations, 1952. (S.I. 1952 No. 89.)

Women's and Maids' Utility Outerwear (Distributors' Maximum Prices and Charges) (Amendment) Order, 1952. (S.I. 1952 No. 97.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

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Appointment of New Trustee—Christian Science Society—Evidence—Consent of Charity Commissioners to Sale of Land

Q. We act for the purchaser of a plot of land from the trustees of a local Christian Science Society. The plot of land is vacant and has been used as an allotment garden. The land was conveyed in 1944 to GB, EV and EB. In that conveyance the only references to the trusts are the following recitals: "And whereas the purchasers are the duly appointed trustees of the Christian Science Society of —— aforesaid whose meeting place is at —— Street, ——, aforesaid; and whereas the purchasers with the consent of the committee of the said society have agreed with the vendors for the purchase by them of the unincumbered fee simple in possession of the said property hereinafter described at the price of sixty pounds." There is an acknowledgment that the purchase money was paid by the purchasers out of the funds of the society; and the habendum as follows: "To hold the same unto the purchasers in fee simple as trustees for the said society for the use and benefit of the said society and the members thereof and persons claiming through them according to the rules of the said society." We are informed that EV retired from the trusts and AWM was elected a trustee in her place at the annual meeting of members in December, 1946. GB died in January, 1951, and EW was elected a trustee in his place at a members' meeting in April, 1951. The only reference to trustees in the rules of the society is as follows: "The society's property shall be vested in not less than three trustees appointed by the society upon trust for Christian Science Society, ——, England." (1) Is it necessary for a deed of appointment of new trustees to be executed? (2) If not, what evidence should be required with regard to the appointment of the new trustees in order to make a good title?

A. As the rules of the society merely refer to the vesting of the property in the trustees and do not prescribe machinery for the appointment of new trustees, reliance must be placed upon the powers contained in the Trustee Act, 1925, s. 36, or the Trustees Appointment Acts, 1850 to 1890. It seems to us that the trustees of the Christian Science Society are trustees for chapel purposes within the last-mentioned Acts (see s. 2 of the 1890 Act). The procedure required by the Trustees Appointment Acts is the selection and appointment of the new trustee by the body of persons, which appears to have been done by the meeting held in April, 1951. Such choice and appointment is to be evidenced by deed under the hand and seal of the chairman of the meeting at which the appointment was made, which deed must be in statutory form and executed in the presence of the meeting at which the appointment was made and attested by two witnesses. As it appears that no such deed was executed, it seems that the

best course will be for the continuing trustees to appoint as a new trustee the person nominated by the meeting in April, 1951, for this purpose utilising the powers under s. 36 of the Trustee Act, 1925. We also consider that the purchaser should be satisfied that the consent of the Charity Commissioners is not required for the sale, and in view of the difficulty of determining whether land purchased by a charity has become an endowment we suggest that a determination should be sought under s. 16 of the Charitable Trusts Act, 1853. If the land had become part of the society's endowment and the consent of the Charity Commissioners had not been obtained the conveyance to the purchaser would be void (Charitable Trusts Amendment Act, 1855, s. 29).

Intestacy—Implied Assent by Administratrix in Her Own Favour—Specific Devise—Title of Devisee

Q. In 1935 X died intestate. His estate consisted of a small suburban house, then worth about £700, which was mortgaged to a building society for £600, some furniture, but little else. He left a widow and four children, two of whom were then minors; all the children are now living and are of full age. X's widow, Y, did not take out a grant of letters of administration to her husband's estate, but she continued to live in the beforementioned house and paid the instalments to the building society until she died in the year 1945, by which time the mortgage was considerably reduced. Y made a will appointing her eldest son, A, as executor and specifically devised the said house to him with the chattels therein. There were no other dispositions and no residuary gift. Y's estate consisted of the said house and the chattels, and practically nothing else. A, who resided with his mother all his life until she died in 1945, took out a grant of probate to Y's will and continued to reside in the house. He continued paying the instalments to the building society, and the principal due upon the mortgage is now reduced to a very small figure. Was the specific devise in Y's will effective, or does the house fall into the estate of Y under a partial intestacy, with the result that all the children of X and Y are entitled to a share?

A. As X's estate was under £1,000 in value, Y was entitled to appropriate the whole to herself beneficially and to assent in her own favour under s. 36 (1) of the Administration of Estates Act, 1925. Since the legal estate was not required to pass to some person other than the administratrix it appears that the assent need not be in writing (*Re Hodge; Hodge* v. *Griffiths* [1940] Ch. 260; *Harris* v. *Harris* [1942] L.J.N. C.C.R. 119). The circumstance that Y continued to live in the house and her undertaking of the mortgage repayments point to an implied assent in her own favour, and our opinion is that there was such an assent at some date between 1935 and 1945. On this basis we consider that there was a sufficient beneficial interest in the house and chattels vested in Y at her death to render effective the specific devise to A. We feel, however, that if the consent of the persons entitled to Y's estate as on an intestacy cannot be obtained, A would be justified in seeking the decision of the court and would probably be well advised to do so in any event, for the protection of his title to the legal estate.

Corn Rent—Non-disclosure by Vendor—The Law Society's Conditions of Sale, 1934 ed., Condition 19 (1)

Q. H purchased at an auction sale seven houses. The contract was made subject to The Law Society's Conditions of Sale. There was no reference in the special conditions to any outgoings at all and there was no reference to tithe rentcharge or corn rent. The purchaser's solicitors raised a requisition in the normal course: "Is there any and what land tax, tithe redemption annuity or other imposition or outgoing of any kind charged upon or payable in respect of the property or any part thereof?" to which the reply was given: "Not to the vendors' knowledge." No reference was made by the vendors' solicitors or agent to the matter of corn rent until after completion, when the vendors' agent informed the purchaser that there was a corn rent amounting to 15s. 4d. a year charged on this property. The corn rent is apparently due to the Church Commissioners in accordance with the Tithe Act, 1925. On a claim being made against the vendors requiring them to redeem this corn rent on the ground that it had not been disclosed, the vendors' solicitors replied, "The vendors deny liability," and referred the purchaser's solicitors to The Law Society's General Condition 19 (1). (1) Does General Condition 19 (1) apply to corn rent? (2) In view of the answer to the purchaser's requisition, can the vendors be compelled to redeem the corn rent or otherwise compensate the purchaser?

A. Although we are not aware of any direct authority on the point, our opinion is that the expression "tithe rentcharge" in General Condition 19 (1) of The Law Society's Conditions of Sale, 1934 ed., does include a corn rent of the kind mentioned in the question. In this connection reference may be made to the definition of "tithe rentcharge" in s. 24 (1) of the Tithe Act, 1925, which is expressed to include a corn rent converted under the Tithe Acts. As the corn rent appears to have been of a class excepted from the operation of the Tithe Act, 1936, the provision in s. 13 (8) of that Act to the effect that tithe redemption annuity is an incumbrance within s. 183 of the Law of Property Act, 1925, will not apply to it, and the vendor would not appear to have been under any obligation to disclose the existence of the rent, as he was not expressly selling tithe- or rent-free (*Binks* v. *Lord Rokeby* (1818), 2 Sw. 222). The answer to the requisition, although misleading, is after the contract has been concluded and does not, in our opinion, affect the position. Accordingly, we consider that the vendor is not liable to redeem the corn rent or pay compensation in respect thereof.

Will—Appointment of Substitutional Guardians

Q. A client wishes, by his will, to leave everything to his wife and appoint her executrix and, in the event of her not surviving him for one month, to appoint a guardian for his infant children. The proposed guardian, however, is in indifferent health and the testator wishes, by the will, to appoint two other persons as guardians in the event of the first guardian dying after the testator's death and during the minority of the children. We are not aware of any precedent for this and are doubtful whether the second appointment would be valid.

A. There appears to us to be no legal objection to the appointment of persons to act as guardians if the guardian primarily appointed dies during the minority of the testator's children. The Act 12 Car. 2, c. 24 (which is still in force), expressly gives power to appoint guardians "in possession or remainder." For forms of appointment of substitutional guardians, see Hayes & Jarman's Forms of Wills, 15th ed., pp. 157, 164 and 227.

Stamp Duty—Assent to One of Four Devisees Who Has Purchased Shares of Others

Q. By his will X devised his freehold dwelling-house to his trustees, "Upon trust to sell the same and to stand possessed of the net proceeds of such sale in trust for A, B, C and D or such of them as shall survive me and if more than one in equal shares." All four survived the testator. D wishes to purchase the shares of A, B and C so as to become the owner of the dwelling-house in fee simple. A, B and C are willing to sell. The trustees' solicitor considers that the appropriate method of procedure is for A, B and C to assign to D their equitable interests and then for the trustees to assent to the vesting of the property in D. The solicitor acting for D objects to this procedure on the ground that the assignment of the equitable interests attracts *ad valorem* stamp duty and he contends that the object in view can properly be accomplished by A, B and C giving to D a simple receipt for the purchase money—the trustees then to assent to the vesting of the dwelling-house in D. He further contends that such an assent (under hand) would give D a good title. This procedure would no doubt avoid the payment of stamp duty, but the trustees do not feel happy about it, and as at present advised are not inclined to agree. What is their proper course of procedure? Can D compel the trustees to assent to the vesting in himself on production of an acknowledgment by A, B and C that they have received the agreed consideration from D?

A. Whether the transaction is carried out by means of assignments of the equitable interests of A, B and C to D or the payment of the purchase money in exchange for receipts, we consider that *ad valorem* duty will be payable—in the latter case on the assent. The question of whether the assent under hand will give D a good title is not free from doubt and rests on the construction of the word "otherwise" in s. 36 (1) of the Administration of Estates Act, 1925. If in that section "otherwise" is to be construed *ejusdem generis* with the previous words, an assent by way of sale would be excluded. The case of *G.H.R. Co., Ltd.* v. *Inland Revenue Commissioners* [1943] 1 K.B. 303, where the validity of an assent to complete a contract for sale entered into by a deceased vendor was assumed rather than decided, tends to confirm the view that "otherwise" should be given a wide construction. In the same case it was decided

that an assent which gives effect to a sale attracts *ad valorem* stamp duty. The proposed assent in the present case seems to us to come within the same principle by giving effect to the sale transactions between A, B, C and D, which would thereby render the assent liable to *ad valorem* stamp duty unless such duty is borne by the assignments of the equitable interests. A similar opinion is expressed in Williams on Assents, p. 42. If it is decided to dispense with the assignments of the equitable interests the assent should contain a reference to the money paid for equality and a direction by A, B and C to the executors to appropriate the property to D.

Restrictive Covenant — PROHIBITION OF BUSINESS AND REQUIREMENT TO USE AS PRIVATE DWELLING-HOUSES ONLY —CONVERSION INTO FLATS

Q. We are acting for the proposed purchaser of a dwelling-house which was converted into two self-contained flats some years ago (we have not yet been able to ascertain when this conversion took place but it was either in or prior to the year 1941). The draft contract for sale submitted to us by the vendor's solicitors stipulates that the property was sold subject to certain stipulations and restrictions as to building user or otherwise contained in a conveyance dated the 3rd July, 1888, so far as the same are still subsisting and capable of being enforced. A copy of such stipulations was supplied with the contract and one of them reads as follows: "Not to carry on or suffer to be carried on upon the conveyed premises or any part thereof or on the houses already built or to be or being built without the consent in writing of the vendors their heirs or assigns any art trade business calling or employment or other profession except that of a legal or medical practitioner but to use or permit or suffer the same to be used as and for private dwelling-houses only subject as aforesaid."

In your opinion (assuming that the vendor's consent referred to in such stipulation has *not* been obtained) does the conversion of the dwelling-house into two self-contained flats and the subsequent letting of one or both thereof constitute a breach of the above-mentioned stipulation? If so, is the stipulation enforceable should the proposed purchaser still wish to proceed with the purchase of the property? We would mention that the property is now being sold with vacant possession of one flat, and the other flat is subject to a written tenancy agreement in which the tenant agrees to use such flat as a private dwelling only.

A. In our opinion the conversion of the dwelling-house in question into two self-contained flats does not constitute a breach of the covenant referred to. This covenant requires that the land or houses shall be used as "private dwelling-houses only" and the cases such as *A.-G.* v. *Mutual Tontine Westminster Chambers Association* (1876), 35 L.T. 224; *Kimber* v. *Admans* [1900] 1 Ch. 412; and *Ilford Park Estates, Ltd.* v. *Jacobs* [1903] 2 Ch. 522, where the division of houses into flats was held to be prohibited, specifically restrained the erection of more than one dwelling-house on each plot of land. *Dulwich Estate Governors* v. *Keeble* (1928), 72 SOL. J. 284, shows that a distinction must be drawn between a covenant which requires premises to be used as *a* private dwelling-house and prevents division into flats, and a covenant in the form given in the question where the reference is to private dwelling-houses in the plural. Nor do we consider that the division into flats constitutes the carrying on of a business where only one is let and the owner resides in the other, such circumstances being rather different from those in *Barton* v. *Reed* [1932] 1 Ch. 362, where the sub-letting was more extensive. In any event, we feel that, as the conversion took place at least as long ago as 1941 and the covenants themselves are over sixty years old, the original vendor or the persons deriving title under him would have considerable difficulty in enforcing the covenants, especially if similar conversions are common in the neighbourhood.

Legacy to Nursing Association—FUNCTIONS TAKEN OVER UNDER NATIONAL HEALTH SERVICE ACT, 1946—PERSON TO GIVE RECEIPT

Q. Mrs. D by her will dated in October, 1946, bequeathed free of duty (*inter alia*) to the B Nursing Association the sum of £20. The will does not contain the usual direction that the receipt of the treasurer or other officer of this association shall be a sufficient discharge for the trustees. The testatrix died in February, 1950, and her will was proved in August, 1950. In the interval between the date of the will and the date of death, the National Health Service Act, 1946, came into operation. The nursing association is still in existence, but its work in providing a nurse to attend to persons who require nursing in their own homes has been taken over by the county council. The association still has a banking account, but has ceased to function for the purposes for which it was originally inaugurated. To whom should the trustees pay the legacy, or has there been a lapse?

A. In this case there is an unconditional and immediate legacy for the B Nursing Association which was in existence at the date of Mrs. D's death. Notwithstanding that, in consequence of the National Health Service Act, 1946, the main work of the association has been taken from it, the testatrix has not altered her will, and it seems to us that the legacy must be paid to the association (see *Re Morgan* [1950] 1 All E.R. 1097; *Re Glass* [1950] 2 All E.R. 953). As the legacy is immediate it is unnecessary to decide whether the association remains a charity. The absence of a declaration in the will that the receipt of the person professing to be the treasurer, etc., shall be a discharge to the executors is inconvenient, but in the circumstances, and especially having regard to the small amount of the legacy, we consider that the best course is for the legacy to be paid to the association's bankers for the credit of the association's general account and for the responsible officers of the association (probably the persons qualified to draw cheques on the account) to be asked to give an undertaking that the legacy will be employed as part of the general funds of the association.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Sale of Houses to Sitting Tenants

Sir,—We have read with considerable interest the article under the above heading on p. 19 of the issue of THE SOLICITORS' JOURNAL dated 12th January, 1952, but there is one aspect of the matter which does not seem to have been referred to by your contributor.

We have, for many years, been acting for the owner of a considerable housing estate in this district who has been pursuing a policy of encouraging his sitting tenants to buy their houses at a price between the investment value and the vacant possession value. Some years ago he found that in two successive cases the purchasing tenants, after the conveyance, vacated the property and resold with vacant possession at a very handsome profit, and so our client instructed us to devise a method of preventing, or at least deterring, purchasers from doing this. We therefore inserted in all subsequent conveyances a covenant by the purchasing tenant that if within two years after the date of the conveyance he or his successors in title should sell the property at a price in excess of the price paid by the purchasing tenant, then the latter or his successors in title would pay to the vendor or his successors in title a sum equal to one-half of the amount by which such resale price exceeded the purchasing tenant's purchase price.

We completed some seven or eight conveyances with this clause, in each case the purchasing tenants having their own solicitors acting for them. About a year ago we had another such case in which we acted also for the tenant. The price was about £800, with a perpetual yearly rent charge of £5 being also reserved by the conveyance in favour of the vendor. When we presented the conveyance and duplicate at the stamp office for stamping we were surprised to be told by the distributor that he considered that this covenant was a provision for an increase in the purchase price in certain events and that the increase had no maximum, and, therefore, the usual declaration under the Finance Act regarding the amount or value of the consideration not exceeding £1,500 could not properly be included. The effect of this was, according to the distributor, that the *ad valorem* stamp duty must be at the rate of 2 per cent. instead of 1 per cent. We pointed out to the distributor that to our knowledge several conveyances containing this same covenant had previously been stamped by his office for 1 per cent., but his reply was that this must have been without his knowledge and he still maintained

his point. He did, however, invite us to have the matter settled by submitting the document for adjudication, and we availed ourselves of this but his view was maintained by the adjudication department. The controller there, however, did say that in the particular circumstances of this transaction it was not likely that the amount of any such increased consideration payable under covenant would bring the aggregate consideration over £1,500 and so that particular conveyance could be stamped at 1 per cent. We were told, however, that every other such transaction must be considered on its own particular circumstances and that the principle as enunciated by the distributor at Manchester was correct.

Since this incident took place, we have in subsequent conveyances for the same vendor amended the form of covenant by the purchaser. The covenant which we now require is negative in form and is to the effect that the purchaser will not within a period of two years next ensuing after the date of his conveyance resell the property at a price in excess of the consideration paid by him, and that in the event of any breach of such covenant the purchaser shall pay to the vendor by way of liquidated damages a sum equal to one-half of the amount by which his resale price exceeds his purchase price. Several conveyances containing this negative clause have been completed and presented at the Manchester stamp office and have been accepted as liable to duty at the reduced rate, together with a stamp of 10s. in respect of the covenant. We think this point should be borne in mind by any practitioners who adopt in the future any covenant by a purchasing sitting tenant to share profit with the vendor, and we should like to have the views of your contributor on the point we have raised.

BARROW & SMITH.

Manchester.

Hill Sheep Compensation

Sir,—Your contributor " R.B.'s " letter raises another question about the new item of tenant right which I would like to try and answer.

If a tenant on entry has taken over, either at a price or as part of the demised premises, a hefted flock, only the normal pastoral work will be necessary to maintain the flock, and he will not expect compensation on quitting. The flock will keep to its heft in all weathers, and if brought in to enclosed land in winter, when put on to the moor in spring, will make for its heft, often following in single file an old and experienced ewe.

But if during his tenancy a tenant establishes sheep for the first time on open land, the work done by the shepherd in hefting the sheep (often involving weeks spent, day and night, with the sheep on the moor) is by the new order made the subject of compensation. The value of the work done is in the sheep themselves; and the measure of the compensation for a new improvement being its value to the incoming tenant (Agricultural Holdings Act, 1948, s. 51 (1)), the incomer can only benefit if he can take over the identical hefted sheep (or a sufficient number of them to form a flock). So that if an outgoing tenant sold his hefted sheep " to go off " he could not expect any compensation.

Mr. Eric Hill has pointed out that a tenant is usually required by agreement to leave a flock of hefted sheep, and they must be of the same number and quality as on entry; but the agreement does not usually provide for establishing new hefts—now entitling a tenant to compensation.

I believe the old practice among valuers was to put a higher value on hefted sheep than on " inland " sheep when valuing on a change of tenancy, so the extra value could, perhaps, be regarded as " compensation." But the outgoer who has established a new heft will presumably now be entitled to (*a*) the value of the sheep as sheep and (*b*) the reasonable cost at current rates of wages for the shepherd's time and other labour involved in training the sheep.

Presumably the Minister of Agriculture and Fisheries will amend the Agriculture (Calculation of Value for Compensation) Regulations, 1948, on these lines, to provide for the new item of " acclimatisation, hefting or settlement of hill sheep on hill land."

T. GRENFELL ARNOTT.

Newcastle-upon-Tyne.

Women on the Bench

Sir,—I was interested to read your paragraph under the above heading in the issue of 26th January, 1952, at p. 47. This problem of the mode of address for ladies holding official posts has, of course, been known for some time in local government. " Madam Chairwoman " has been disallowed on all sides—no doubt because of the possible confusion with " Madam Charlady "—but " Madam Chairman " is often accepted in preference to " Mr. Chairman." The Society of Town Clerks, however, have recently repeated a pre-war ruling on the designation of a lady mayor, and are of the opinion that the correct mode of address is " Mr. Mayor "; but on more formal occasions " The Worshipful the Mayor " should be used in preference to " His (or Her ?) Worship the Mayor." We are still, however, uncertain whether or not to address a *male* mayoress as " she " or " her "!

J. F. GARNER,
Town Clerk.

Andover.

NOTES AND NEWS

Honours and Appointments

The Chancellor of the Duchy of Lancaster has appointed Mr. HAROLD BROWN to be a Judge of County Courts on Circuit No. 6 (Liverpool, etc.) to fill the vacancy caused by the death of His Honour Judge Crosthwaite.

Mr. PETER J. S. BEVAN has been elected a Master of the Bench of the Middle Temple.

The Rt. Hon. ANTHONY EDEN, M.C., M.P., has been elected an Honorary Master of the Bench of the Middle Temple.

Mr. ARTHUR BOND, solicitor and secretary of the Eastern Electricity Board, has been appointed deputy chairman of the Yorkshire Electricity Board.

Mr. G. C. MIDDLETON, of the Town Clerk's department, Lancaster, has been appointed assistant solicitor to the County Borough of Darlington.

Mr. NORMAN MITCHELL, deputy Town Clerk of Accrington, has been appointed Town Clerk of Farnworth.

Mr. W. K. G. THURNALL has been appointed prosecuting solicitor for Manchester Corporation.

Mr. A. C. MILLER, Sheriff-Substitute of Inverness, Moray, Nairn and Ross and Cromarty at Fort William, has been appointed legal adviser in Scotland to the British Transport Commission as from 28th March next, when Mr. Matthew Wallace, the solicitor to the Commission in Scotland, will retire.

Personal Notes

Mr. H. G. Arthur, solicitor, of Harrow, has been elected hon. general secretary of the Staffordshire Society.

Major A. H. Waters, chief clerk of the taxing office at the Four Courts, Dublin, is retiring after forty-seven years' service, of which twenty-five years were spent in the taxing office. He has been presented with a radiogram by the legal accountants.

Miscellaneous

THE SOLICITORS ACTS, 1932 TO 1941

PETER IVOR BENJAMIN, formerly of 6, Great Winchester Street, London, E.C.3, solicitor, having, in accordance with the provisions of the Solicitors Acts, 1932 to 1941, made application to the Disciplinary Committee constituted under the Acts that his name might be removed from the Roll of Solicitors at his own instance on the ground that he desires in due course to be called to the Bar, an order was, on the 10th January, 1952, made by the Committee that the application of the said Peter Ivor Benjamin be acceded to and that his name be removed accordingly from the Roll of Solicitors of the Supreme Court.

On the 18th January, 1952, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of WILLIAM DUNN FURNISS, formerly of Lytham St. Annes and Weymouth and now of H.M. Prison,

Winchester, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

It has been decided to continue the extended hours of opening introduced last May at the Patent Office Library at 25, Southampton Buildings, Chancery Lane, W.C.2. The hours are 10 a.m. to 9 p.m. Monday to Friday, and 10 a.m. to 5 p.m. Saturday.

DISTRIBUTION OF GERMAN ENEMY PROPERTY

From 1st February, 1952, and for the following three months, the Administrator of German Enemy Property is authorised to accept claims under the Distribution of German Enemy Property Act, 1949, in respect of German enemy debts. Claim forms are now available and can be obtained, on application, from the Administrator of German Enemy Property, Branch X, Lacon House, Theobalds Road, London, W.C.1.

Different forms are provided for—

(1) Claims in respect of German Reich Bonds (i.e., Konversionskasse 4 per cent. Sterling Bonds, enforced bonds of the Dawes, Young and Austrian 5 per cent. loans, and enfaced Austrian Government Credit Anstalt Bonds).

(2) Claims in respect of non-Reich Sterling bonds quoted on the Stock Exchange.

(3) Claims by bankers under the standstill agreement.

(4) All other claims.

When applying for forms intending claimants should state the forms they need, or if in doubt, should give brief particulars of the debt or debts in respect of which they propose to claim.

Wills and Bequests

Mr. J. Dixon, solicitor, of Sittingbourne, left £101,931 (£101,504 net).

Mr. M. J. Raymond, solicitor, of Wimborne, left £49,183 (£47,732 net).

OBITUARY

MR. L. ABRAHAMS

Mr. Lionel Abrahams, solicitor, of St. Neots, has died. He was admitted in 1912 and was Coroner of Huntingdonshire and registrar of Huntingdon County Court.

MR. H. N. DAVIES

Mr. Howell Norman Davies, solicitor, of Pontardawe, died on 11th January, aged 44. Admitted in 1935, he was clerk to Pontardawe Justices until his retirement owing to ill health last year.

MR. B. FLETCHER

Mr. Basil Fletcher, M.B.E., solicitor, of East Hagbourne, Berks, has died at the age of 87. He practised in London until his retirement at the age of 43. He was a magistrate for the Moreton division of Berkshire.

MR. E. A. W. GRAHAM

Mr. Edward Arnold William Graham, senior managing clerk with Messrs. Sherwood & Co., of Westminster, died on 12th January, aged 53. He had served with the firm for twenty-seven years.

MR. R. HARRIS

Mr. Reginald Harris, solicitor, of Willenhall and Bilston, Staffordshire, died on 17th January, aged 68. He was admitted in 1904.

Mr. J. MILLS

Mr. Jimmy Mills, solicitor, of Blackpool, died on 3rd January, aged 68. He was admitted in 1907.

MR. J. A. MORLEY

Mr. John Alfred Morley, solicitor, of West Kensington and Wealdstone, died on 14th January, aged 67. He was admitted in 1909.

MR. D. O'CONNELL

Mr. Daniel O'Connell, solicitor, of Dundalk, died recently. He was a past President of the Incorporated Law Society of Ireland.

Mr. A. B. THORNELOE

Mr. Alfred Bates Thorneloe, solicitor, of Sheffield, died on 9th January, aged 63. He was admitted in 1927 and was solicitor to the Sheffield section of the Road Haulage Association, chairman of the National Insurance Appeal Committee and of the Military Hardships Tribunal.

MR. H. F. WHITE

Mr. Harold Forbes White, solicitor, of St. Bride Street, London, E.C.4, died on 5th January, aged 68. He was admitted in 1907, and was a Freeman of the City of London and a former Mayor of Bromley, Kent, and chairman of Bromley Magistrates' Court.

SOCIETIES

Mr. R. C. Shaw, secretary of the Cyclists' Touring Club, will open and Mr. Hogarth will second the motion, already announced, to be debated by the LAW STUDENTS' DEBATING SOCIETY on 5th February at 7 p.m.: "That the causing of personal injury by the careless opening of car doors is a serious matter and should be dealt with as a serious offence." Members of the C.T.C. will be welcome as visitors on production of their membership cards.

A lecture will be given to the MANSFIELD LAW CLUB of the City of London College by Mr. I. J. Pitman, M.P., on "Management and Organisation," on 7th February.

The annual dinner of the UNIVERSITY COLLEGE LONDON LAW SOCIETY was held at the College on Wednesday, 16th January, 1952. Among the guests of honour were The Rt. Hon. The Master of the Rolls, Sir Raymond Evershed; Sir Godfrey Russell Vick, K.C., the Chairman of the Bar Council; Mr. G. A. Collins, the President of The Law Society; Lord Normand; and Dr. B. Ifor Evans, Provost of the College.

The SOLICITORS' ARTICLED CLERKS' SOCIETY announce the following items: 6th February: Skating at Queen's Club, Bayswater, from 6.30 p.m. Meet on the ice, or at 6 p.m. in the Pirates' Cabin (opposite Queensway Station).

14th February: A Valentine dance will be held at The Law Society's Hall from 7 p.m. Tickets at door—members 2s. 6d., guests and non-members 3s. 6d. Dress informal. Food at cost prices.

Articled clerks wishing to join the Society should write to the Secretary at The Law Society's Hall, Chancery Lane, London, W.C.2.

The UNION SOCIETY OF LONDON (meetings in the Common Room, Gray's Inn, at 8 p.m.) announce the following subjects for debate in February, 1952:

Wednesday, 6th February: "That this House is in favour of reducing State expenditure on education"; Wednesday, 13th February: "That the racial policy of the Union of South Africa is incompatible with membership of the British Commonwealth"; Wednesday, 20th February: "That this House has no confidence that the Disarmament Commission will achieve any satisfactory results"; Wednesday, 27th February (joint debate with the Hardwicke Society): "That this House prefers the medieval maiden to the modern minx."

At a general meeting of the ROYAL INSTITUTION OF CHARTERED SURVEYORS to be held on Monday, 11th February, 1952, at 5.30 p.m., Mr. Bryan L. Richards, G.M., B.Sc., F.R.I.C.S., Chief Estates Officer, Crawley Development Corporation, will give an address on "Some Practical Aspects of New Town Development."

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).